IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No.74 of 1988
Date of Decision:17.01.2007

M/s Mittal Alloys & Steels, Ludhiana .....Petitioner
Vs.
The Commissioner of Income-tax, Patiala .....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Sanjay Bansal, Advocate for the petitioner.
Mr. S.K.Garg Narwana, Advocate for the revenue.

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Rajesh Bindal, J.

The following questions of law have been referred for opinion of this Court, arising out of order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, `the Tribunal'), in I.T.A. No.862/Chandi/84 dated 21.8.1987 in respect of assessment year 1977-78:-

> "1. Whether on the facts and circumstances of the case, the letter dated 12.11.1979 claiming further relief u/s 358 and 80J could not be considered to be a revised return for the purpose of justifying the ITO's proceeding u/s 144B?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was correct in law in holding that there was no invariable rule of law that the return filed u/s 139(4) could never be revised?
>
> 3. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the adoption of machinery procedure laid down in section 144B was not fatal and would not render the proceedings void and they could be saved by section 292B of the Income-tax Act?
>
> 4. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessment was not liable to be annulled altogether instead of merely being set aside?"

However, at the time of hearing, the counsel for the assessee sought to consolidate the issue by reframing the following single question to which counsel for the revenue does not have any objection:-

> "Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that the assessment made by the Income Tax Officer on the basis of the letter revising the return under Section 143(3) read with Section 144B of the Act was not vitiated under law and the very order of assessment was not liable to be annulled?"

Briefly, the facts of the case are that, for the assessment year in question, the assessee did not file his return of income before the due date i.e., June 30, 1977. No notice for assessment under Section 143(2) of the Income Tax Act, 1961 (for short, `the Act') was issued to the assessee. However, the assessee voluntarily filed return on February 27, 1979 under Section 139(4) of the Act declaring his taxable income at Rs.1,12,790/-. Before the assessment could take place, the assessee vide letter dated November 12, 1979 sought to claim further deduction under Sections 35-B and 80-J of the Act, which were not claimed originally in the return filed under Section 139(4)of the Act and as against the declared income in the return filed on February 27, 1979, claimed loss. Since the difference in the income declared in the return originally filed and the loss claimed in the letter filed was more than Rs.1 lac. The Assessing Officer, for the reasons recorded, held that since the amount of variation proposed to be made in the returned income was exceeding Rs.1 lac, provisions of Section 144-B of the Act were applicable. Accordingly, in the process, a draft of the proposed assessment order was sent to the assessee on March 11, 1980. The objections received to the proposed assessment order on April 2, 1980 were forwarded to the Inspecting Assistant Commissioner of Income-Tax (for short, `the IAC'), who issued necessary order on August 26, 1980. The Tribunal rejected the plea of the assessee holding that mistake can always be corrected in a return filed under Section 139(4) of the Act. The mode of filing of a return or a revised one is of no consequence. Vide letter dated November 12, 1979, the assessee had in fact revised his return and accordingly, the Assessing Officer was bound to consider the letter written by the assessee and applying the standard period of limitation as provided under Section 153 of the Act, it was held that the order of assessment passed by the Assessing Officer with prior approval of IAC was within limitation.

We have heard Mr. Sanjay Bansal, learned counsel for the

assessee and Mr. S.K.Garg Narwana, learned counsel for the revenue.

Learned counsel for the assessee, in view of the above factual matrix, submitted that the two primary issues sought to be raised in the present case are squarely covered by judgments of Hon'ble the Surpeme Court namely that a return filed under Section 139(4) of the Act cannot be revised as held in the case of **Kumar Jagdish Chandra Sinha v. CIT, (1996)** 220 ITR 67 and further that a return filed by the assessee cannot be revised by way of a letter as held in the case of **Goetze (India) Ltd. v. CIT,** (2006) 284 ITR 323.

Learned counsel for the revenue could not dispute the proposition of law laid down in the above referred cases. Even this Court while considering the issue under Wealth Tax Act, 1956 was following the judgment of Hon'ble Surpeme Court in **Kumar Jagdish Chandra Sinha's case (supra)** in W.T.R. Nos.64-70 of 1992 – **Commissioner of Wealth Tax, Jalandhar v. Mahnga Singh,** decided on 7.12.2006. Once it is settled that a return filed could not be revised merely by filing a letter and still further that a return filed under Section 139(4) of the Act could not possibly be revised, the cognizance of the letter dated November 12, 1979 taken by the Assessing Officer to treat the return filed under Section 139(4) of the Act as revised, was totally contrary to the provisions of law. Once that was so, there being no difference exceeding Rs.1 lac in the return filed and the proposed assessment, the matter was not required to be considered relying upon provisions of Section 144-B of the Act and accordingly, extended period of limitation, as provided for under Section 153(iii) of the Act, would not be available to the revenue.

In view of our above discussions, we answer the question in favour of the assessee and against the revenue by holding that neither a return filed could be revised by way of a letter nor a return filed under Section 139(4) of the Act could be revised.

(RAJESH BINDAL)
JUDGE

January 17, 2007 **(M.M.KUMAR)**
renu **JUDGE**